

1 On August 7, 2008, after satisfying what it considered to be its final payment obligation
2 under the settlement agreement, TPRC filed a motion in Nevada state court seeking to
3 compel McKnight to execute a UCC-3 termination statement. McKnight responded that she
4 was still owed accrued interest in the amount of \$80,000. Response, exhibit 1, ¶ 4. On
5 October 20, 2008, the Nevada state court issued a ruling rejecting McKnight's claim, but
6 concluding that TPRC owes McKnight an additional \$1,106.64, plus interest, and ordering
7 McKnight to file the UCC-3 termination statement within 20 days of this final payment.
8 Response, exhibit 4, at 2.

9 On July 22, 2008, McKnight filed this action in federal court, alleging that the
10 defendants breached the terms of the settlement agreement, that she is owed an additional
11 \$80,000 in accrued interest, and that because the agreement is now a "nullity," she is entitled
12 to return of the TPRC stock. Complaint ¶ 10; Response at 2; McKnight affidavit ¶ 3.
13 Defendants move to dismiss for lack of subject matter jurisdiction, lack of personal
14 jurisdiction, and improper venue. We conclude that we are without subject matter
15 jurisdiction because McKnight has failed to establish that the amount in controversy exceeds
16 the jurisdictional minimum.

17 Federal courts are courts of limited jurisdiction, possessing only that power authorized
18 by the Constitution and statute. "It is to be presumed that a cause lies outside this limited
19 jurisdiction, and the burden of establishing the contrary rests upon the party asserting
20 jurisdiction." Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377, 114 S. Ct. 1673, 1675
21 (1994). In order to invoke federal diversity jurisdiction, there must be complete diversity of
22 citizenship between the parties and the amount in controversy must exceed \$75,000. 28
23 U.S.C. §1332(a). Where a defendant challenges the plaintiff's allegation as to the amount
24 in controversy, the plaintiff must support the allegation with competent proof. KVOS, Inc.
25 v. Associated Press, 299 U.S. 269, 277-78, 57 S. Ct. 197, 200-01 (1936). Because the
26 defendants have challenged McKnight's allegations regarding the value of her claim, it is
27 McKnight's burden to show that "it does not appear to a legal certainty that her claim is for
28 less than the required amount." United States v. Southern Pac. Transp. Co., 543 F.2d 676,

1 682 (9th Cir. 1976) (citing St. Paul Mercury Indem. Co. v. Red. Cab Co., 303 U.S. 283, 288-
2 89, 58 S. Ct. 586, 590 (1938)).

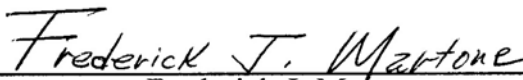
3 A defendant may attack the existence of subject matter jurisdiction apart from the
4 pleadings, Mortensen v. First Fed. Sav. & Loan Ass'n, 549 F.2d 884, 891 (9th Cir. 1977),
5 and we may consider evidence extrinsic to the pleadings to resolve factual disputes relating
6 to jurisdiction, St. Clair v. City of Chico, 880 F.2d 199, 201 (9th Cir. 1989). In such case,
7 “no presumptive truthfulness attaches to plaintiff’s allegations,” and the existence of disputed
8 material facts will not preclude us from evaluating the value of the jurisdictional claim.
9 Mortensen, 549 F.2d at 891.

10 McKnight submits two affidavits to establish the jurisdictional amount in controversy.
11 First, she submits her own affidavit in which she states that, in her opinion, the accrued
12 interest on defendants’ late payments under the settlement agreement is “almost \$80,000.”
13 Response, McKnight affidavit ¶ 3. She then contradicts this statement with an affidavit by
14 a certified public accountant attesting that the remaining amount due under the settlement
15 agreement is approximately \$25,000. Finally, she attaches to her response an order from the
16 Nevada state court concluding that TPRC only owes her an additional \$1,106.64, plus
17 interest. This evidence is not “competent proof” that the amount in controversy exceeds
18 \$75,000. Instead, it appears to a legal certainty that McKnight’s claim is really for less than
19 the jurisdictional amount. We reject McKnight’s argument that because she seeks return of
20 the TPRC stock, the (unspecified) value of the stock should be included in the amount in
21 controversy calculation. McKnight has failed to present any plausible basis upon which to
22 conclude that defendants’ late payments, notwithstanding their otherwise substantial
23 compliance with the settlement agreement, would entitle her to a return of the TPRC stock.

24 **IT IS ORDERED GRANTING** plaintiff’s motion to extend the time to file a
25 response (doc. 14). **IT IS FURTHER ORDERED GRANTING** defendants’ motion to
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1 dismiss for lack of subject matter jurisdiction (doc. 3). Defendants are awarded their just
2 costs pursuant to 28 U.S.C. § 1919.

3 DATED this 20th day of January, 2009.

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8 Frederick J. Martone
9 United States District Judge
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